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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BUILDING SERVICE 32BJ HEALTH FUND, et al.

X

Civ. Action No. 19-cv-11343(PKC)

Plaintiffs,

ORDER

v.

FACILITIES SOURCE CORPORATION,

Defendant.

X

CASTEL, U.S.D.J.

The Court entered default judgment in favor of plaintiffs on April 22, 2020. The Judgment expressly directed that defendant Facilities Source Corporation (“FSC”), in relevant part, make available to plaintiffs certain payroll records within thirty (30) days of Judgment (Docket #21).

On July 30, 2020, plaintiffs filed a motion for a finding of civil contempt and sanctions against FSC, asserting that it had failed to produce those payroll records and that sanctions were warranted to compel compliance. (Docket #24). Plaintiffs sought a finding of civil contempt and monetary sanctions of \$100 per day against FSC until it fully satisfied the production obligations. Said Motion was granted on November 12, 2020. (Docket #27). Monetary sanctions of \$100 per day began to accrue on the date of the Order, November 12, 2020. (*Id.*).

On July 23, 2021, plaintiffs filed a motion to increase the monetary fine against FSC, and to hold respondent Tony Portillo (“Mr. Portillo”), officer of FSC, in civil contempt based on the continued failure to provide the aforementioned payroll records. The Court denied the motion without prejudice because plaintiffs did not make a showing that they attempted to serve Tony

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Portillo individually. (Docket #32). On November 30, 2021, the Court issued an Order demanding that FSC and Mr. Portillo show cause for why an Order ought not be entered holding FSC in further contempt, and holding Mr. Portillo in civil contempt based on the continued disobedience with the Order, as set forth in the memorandum of law submitted in support of plaintiffs' motion and the exhibits thereto. (Docket #33).

The Show Cause Hearing was scheduled for January 5, 2022. (*Id.*). Defendant and Mr. Portillo were served with the order, memorandum of law and exhibits. (Docket #34-35). On January 3, 2022, the Court adjourned the Show Cause Hearing to January 26, 2022. (Docket #36). On January 21, 2022, the Court adjourned the Show Cause Hearing to February 9, 2022. (Docket #39). Regarding both adjournments, the plaintiffs demonstrated that they had served FSC and Mr. Portillo with the orders scheduling the Show Cause Hearing. (Docket #37-38, 40-41).

On February 9, 2022, the Show Cause Hearing was held. Plaintiffs' counsel, Samuel Bloom, appeared. FSC and Mr. Portillo did not appear.

The Court finds as a matter of fact that FSC and Mr. Portillo were given notice of the hearing and an opportunity to be heard. The Court further finds that FSC remains in further contempt of the Court's Order, and that Mr. Portillo, is in contempt due to his own failure, as an officer of defendant, to take action or attempt compliance with the Order. See Wilson v. United States, 221 U.S. 361, 376 (1911); See also Electric Workers Pension Trust Fund of Local Union 58, IBEW v. Gary's Elec., 30 F.3d 373, 383 (6th Cir. 2003).

The Court orders that if the aforementioned records are not provided within fourteen (14) days of this Order, the daily fine against FSC shall increase from \$100 per day to \$300 per day, and Mr. Portillo shall additionally pay \$200 per day, for each day that FSC remains out of

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compliance.

SO ORDERED.



P. Kevin Castel, U.S.D.J.

Dated: New York, New York

Feb 15, 2022